

MONTANA LEGISLATIVE HISTORY

Chapter 612 19 83

Bill H 150 S _____

Original bill & history ✓c

H. Committee on Judiciary

Hearing Date(s) Jan 14 ✓c

_____ c

_____ c

_____ c

Date Out Jan 14 ✓c

S. Committee on Judiciary

Hearing Date(s) Feb 02 ✓c

Mar 02 ✓c

_____ c

_____ c

Mar 02 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Note: A Conference Committee was appointed. Its minutes were not recorded.

HOUSE BILL NO. 150

INTRODUCED BY PECK, SWIFT, H. HAMMOND, BACHINI,
BARDANOUE, CHRISTIAENS, SANDS

IN THE HOUSE

January 10, 1983	Introduced and referred to Committee on Judiciary.
January 14, 1983	Committee recommend bill do pass as amended. Report adopted.
January 15, 1983	Bill printed and placed on members' desks.
January 17, 1983	Second reading, do pass.
January 18, 1983	Considered correctly engrossed.
January 19, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 20, 1983	Introduced and referred to Committee on Judiciary.
March 2, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 4, 1983	Second reading, concurred in.
March 7, 1983	Third reading, concurred in. Ayes, 42; Noes, 5.

IN THE HOUSE

March 7, 1983	Returned to House with amendments.
---------------	------------------------------------

March 9, 1983

Second reading, amendments
not concurred in.

On motion, Conference
Committee requested.

March 10, 1983

Conference Committee
appointed.

April 13, 1983

Conference Committee
reported.

April 14, 1983

Second reading, report
adopted.

Third reading, report
adopted.

April 16, 1983

Conference Committee report
adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 150
 2 INTRODUCED BY Bob Swift Muhammad Robert Gachini
Barbara Christensen
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT TO JUSTICES'
 5 COURTS JURISDICTION OVER FIRST OFFENSES OF CRIMINAL
 6 POSSESSION OF MARIJUANA AND TO ALTER THE PENALTY; AMENDING
 7 SECTIONS 3-10-303 AND 45-9-102, MCA; REPEALING SECTION
 8 45-9-201, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 3-10-303, MCA, is amended to read:
 12 "3-10-303. Criminal jurisdiction. The justices' courts
 13 have jurisdiction of public offenses committed within the
 14 respective counties in which such courts are established as
 15 follows:
 16 (1) jurisdiction of all misdemeanors punishable by a
 17 fine not exceeding \$500 or imprisonment not exceeding 6
 18 months or both such fine and imprisonment--excluding
 19 ~~jurisdiction in cases commenced under Title 45, chapter 9,~~
 20 ~~except to act as examining and committing courts and to~~
 21 ~~conduct preliminary hearings as provided in subsection (4);~~
 22 (2) jurisdiction of all violations of fish and game
 23 statutes punishable by a fine of not more than \$1,000 or
 24 imprisonment for not more than 6 months, or both;
 25 (3) concurrent jurisdiction with district courts of

1 all misdemeanors punishable by a fine only not exceeding
 2 \$1,500; and
 3 (4) jurisdiction to act as examining and committing
 4 courts and for such purpose to conduct preliminary
 5 hearings."
 6 Section 2. Section 45-9-102, MCA, is amended to read:
 7 "45-9-102. Criminal possession of dangerous drugs. (1)
 8 A person commits the offense of criminal possession of
 9 dangerous drugs if he possesses any dangerous drug, as
 10 defined in 50-32-101.
 11 (2) Any person convicted of criminal possession of
 12 marijuana or its derivatives in an amount the aggregate
 13 weight of which does not exceed 60 grams of marijuana or 1
 14 gram of hashish is, for the first offense, guilty of a
 15 misdemeanor and punishable by a fine not to exceed \$1,800
 16 \$500 or imprisonment in the county jail for a term not to
 17 exceed ~~1 year~~ 6 months or both such fine and imprisonment. A
 18 person convicted of a second or subsequent offense under
 19 this subsection is punishable by a fine not to exceed \$1,000
 20 or imprisonment in the county jail for a term not to exceed
 21 1 year or in the state prison for a term not to exceed 3
 22 years or both such fine and imprisonment.
 23 (3) A person convicted of criminal possession of an
 24 opiate, as defined in 50-32-101(18), shall be imprisoned in
 25 the state prison for a term of not less than 2 years or more

-2- INTRODUCED BILL
 HR 150

1 than 5 years and may be fined not more than \$50,000, except
2 as provided in 46-18-222.

3 (4) A person convicted of criminal possession of
4 dangerous drugs not otherwise provided for in subsection (2)
5 or (3) shall be imprisoned in the state prison for a term
6 not to exceed 5 years or be fined an amount not to exceed
7 \$50,000, or both.

8 ~~(5) A person of the age of 21 years or under convicted~~
9 ~~of a first violation under this section shall be presumed to~~
10 ~~be entitled to a deferred imposition of sentence~~

11 (6)(5) Ultimate users and practitioners and agents
12 under their supervision acting in the course of a
13 professional practice, as defined by 50-32-101, are exempt
14 from this section."

15 NEW SECTION. Section 3. Repealer. Section 45-9-201,
16 MCA, is repealed.

-End-

REFERRED TO COMMITTEE ON JUDICIARY: 01/22/83
HEARING: 2/8/83
DIED IN SENATE COMMITTEE

149 -- SELFERT, TURNAGE, HEMSTAD, ET AL. -- PROHIBITING THE USE OF SOCIAL SECURITY
MEMBERS BY PUBLIC AGENCIES EXCEPT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION...

INTRODUCED: 01/10/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/10/83
HEARING: 1/13/83
REPORT: 02/03/83, DO NOT PASS
OBJECTION: 2/4/83
2ND READING: 02/07/83, DO PASS, AS AMENDED AYES: 76; NAYS: 18
3RD READING: 02/10/83, DO PASS AYES: 90; NAYS: 7

TRANSMITTED TO SENATE: 2/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/11/83
HEARING: 3/22/83
REPORT: 3/23/83, BE NOT CONCURRED IN
BILL KILLED: 3/23/83

150 -- PECK, SWIFT, HART, ET AL. -- TO GRANT TO JUSTICES' COURTS JURISDICTION OVER
FIRST OFFENSES OF CRIMINAL POSSESSION OF MARIJUANA AND TO ALTER THE PENALTY; AMENDING
SECTIONS ...; REPEALING SECTION.

INTRODUCED: 01/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/10/83
HEARING: 1/14/83
REPORT: 01/14/83, DO PASS, AS AMENDED
2ND READING: 01/17/83, DO PASS AYES: 91; NAYS: 6
3RD READING: 01/19/83, DO PASS AYES: 89; NAYS: 10

TRANSMITTED TO SENATE: 1/19/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/20/83
HEARING: 2/7/83
REPORT: 3/2/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/04/83 AYES: 46; NAYS: 1
3RD READING: 03/07/83 AYES: 42; NAYS: 5

RETURNED TO HOUSE WITH AMENDMENTS: 3/7/83
2ND READING: 03/09/83, DO NOT PASS AYES: 59; NAYS: 36

CONFERENCE COMMITTEE APPOINTED: 3/10/83

CONFERENCE COMMITTEE REPORT: 4/13/83

HOUSE
2ND READING: 04/14/83, ADOPTED AYES: 89; NAYS: 0
3RD READING: 04/14/83, ADOPTED AYES: 95; NAYS: 0

SENATE
2ND READING: 04/15/83, BE ADOPTED AYES: 49; NAYS: 0
3RD READING: 04/16/83, BE ADOPTED AYES: 46; NAYS: 2

TRANSMITTED TO GOVERNOR: 04/20/83
SIGNED: 4/25/83, CHAPTER 612

MINUTES OF THE JUDICIARY COMMITTEE
January 14, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:00 a.m. in Room 224A of the Capitol. All members were present. Brenda Desmond, Legislative Council, was present.

HOUSE BILL 150

REP. PECK, sponsor, stated House Bill 150 would grant to justices' courts jurisdiction over first offenses of criminal possession of marijuana and to alter the penalty. The bill is at the request of the Health Committee on Long Range Planning in Havre. The parents in Havre believe this legislation will enforce the penalties of marijuana usage.

The penalty would be changed from a fine of \$1,000 to \$500 and from imprisonment for a period of one year to imprisonment for six months.

Under the current statute, a person aged 18-21 is presumed to be entitled to a deferred sentence. The sponsor felt this was a mockery of justice. That clause in the law, therefore, is deleted in this bill. Under Section 45-9-201 the district court has exclusive trial jurisdiction. The purpose of the bill is to allow a defendant to obtain a fair, speedy trial when being prosecuted for first offenses of possession of marijuana. The sponsor felt the usage of marijuana is widespread.

REP. PECK also stated Deputy County Attorney Rice and the Attorney General's office had considered proposing legislation of this nature.

MARC RACICOT, County Attorneys, was in favor of the bill. He stated the County Attorneys were considering introducing a bill of this kind. If a violation of the law is not a misdemeanor, then it is handled in district court. However, drug offenses including misdemeanor drug offenses, are handled in district court, which results in a great deal of work. As a result, many misdemeanor marijuana cases are not processed properly. If jurisdiction of first offenses of criminal possession of marijuana is given to justice court, the cases will proceed more rapidly.

RACICOT further stated the national drug industry is an \$80 billion industry, of which \$29 billion is marijuana. The County Attorneys feel we should stop a lot of people from getting involved in dangerous drugs by admitting it is a serious problem.

RACICOT proposed an amendment that enforcement officers can possess or transport dangerous drugs while acting within the scope of their duties.

There were no further proponents.

There were no opponents.

REP. PECK, in closing, stated the district courts tend to dismiss possession of marijuana cases because of the delay. In Havre a suspect was arrested for selling marijuana on the school grounds. The case was delayed and eventually dismissed.

REP. KEYSER asked about page 3, lines 8-10. What provision concerning deferred sentences would there be for people under the age of 21? REP. PECK responded it would be the same as in other areas of criminal law.

REP. RAMIREZ asked about how minimum mandatory sentencing works. RACICOT replied many people between the ages of 18 and 21 make some judgemental mistakes with dangerous drugs. This mistake could hurt their career in the future. He felt the first offence should be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not less than five days or more than six months. The minimum fine and jail sentence may be imposed as conditions of a suspended or deferred sentence but may not be suspended or deferred entirely. RACICOT gave the committee EXHIBIT A, a proposed bill the County Attorneys would like enacted on this matter. Amendments to HB 150, Exhibit B, were also given by RACICOT.

REP. CURTISS asked if guidelines are necessary for officers to transport the drugs. RACICOT felt it would be within the scope of their employment.

REP. JENSEN asked if this law had been amended to include the presumption of entitlement to deferred sentence in the 1981 session. RACICOT believed it has been in the law since at least 1976.

REP. ADDY asked if an educational program about drugs should be placed in the criminal justice process. RACICOT believed it would be helpful. REP. PECK stated teachers are required to take a drug education class. Montana schools usually have a class in drugs in science courses.

REP. JENSEN asked if the result of children being taught the effects of drugs would be that their use of them would increase or decrease. REP. PECK stated it could be argued

either way.

REP. DAILY asked if section 5 were removed from the bill would deferred sentencing still be allowed. It was replied yes. However, RACICOT felt the section should not be removed.

The hearing on House Bill 150 closed.

SENATE BILL 14

SENATOR MAZUREK, sponsor, stated Senate Bill 14 is a Code Commissioner Bill. The Legislative Council discovered a mistake in the statutes concerning the termination of the parent-child relationship. This bill would remedy that situation.

There were no proponents.

There were no opponents.

The hearing on Senate Bill 14 closed.

HOUSE BILL 139

REP. EUDAILY, sponsor, stated House Bill 139 is to provide whenever a vehicle is witnessed illegally passing a school bus, there is a rebuttable presumption that the registered owner committed the violation. REP. EUDAILY stated he received a letter from the Office of Public Instruction, requesting he sponsor legislation of this type. The letter stated we need something in the law that would help reduce people running the red flashing lights of school buses. In most cases it is hard for the bus driver to make a positive identification of the driver. If a law that is similar to Minnesota law was passed in Montana, perhaps we could save some children from injury or death.

TERRY BROWN, Pupil Transportation Safety Specialist from the Office of Public Instruction, was in favor of the bill. BROWN read from EXHIBIT C.

WAYNE BUCHANAN, Montana School Boards Association, was in favor of the bill. Anything that will protect children is worth consideration.

BUCHANAN stated as a former bus driver he knows the difficulty faced by a bus driver in obtaining a complete description of an offender. As a parent whose son was hit at a school crossing in Wyoming, he totally supports the bill.

there are provisions in existing law that cover the problem intended to be resolved by the bill. CHAIRMAN BROWN stated that if further problems developed the bill could always be taken off the table.

All were in favor of the bill being TABLED. REP. EUDAILY, who was also in favor, voted by proxy.

HOUSE BILL 150

REP. SEIFERT moved DO PASS, seconded by REP. KEYSER.

REP. RAMIREZ moved the committee adopt the amendment RACICOT presented to the committee during the hearing. The committee decided to delay action on the bill until copies of the amendments had been made.

The committee then went in to regular hearing.

REGULAR HEARING

HOUSE BILL 130

REP. STOBIE, sponsor, stated this bill is intended to prevent the manufacture, possession, sale and advertisement of imitation dangerous drugs. The Montana Medical Association had planned to introduce similar legislation. REP. STOBIE became aware of this problem from a paper his daughter did in college.

REP. STOBIE stated that a letter from the Board of Crime Control (EXHIBITS D and E) states most people who have been caught selling imitation dangerous drugs are also known for selling dangerous drugs; most advertising for these drugs originates out of state but material containing imitation drug advertisements is readily available in most newstands, headshops, etc. It is likely that those in Montana who will go to prison for this crime if this bill is passed, will be found to have prior felony convictions.

The problem is pills are being manufactured to look like the real thing. Imitation drugs that are sold on the street are presented for sale as illegal dangerous drugs such as "Brown Betty" or "Black Beauty".

Thirty-eight states have legislation similar to this bill. This bill was modeled after the North Dakota law. A Statement of Intent was given to the committee. EXHIBIT F.

they can only be prosecuted for the selling of real drugs.

REP. VELEBER asked about the usage of look alike drugs and marijuana in the schools. MEREDITH replied students take the drugs for a psychological high - they think they are taking the real thing, and therefore, tend to act that way. The sponsor added students that have a big imagination can change their behavior.

EXHIBITS M through P were also given in support of the bill.

The hearing on House Bill 130 ended.

The committee went back into Executive Session.

EXECUTIVE SESSION

HOUSE BILL 150

REP. RAMIREZ moved that House Bill 150 be amended by reinserting lines 8 through 10 on page 3, (concerning deferral of sentences) and by adopting the amendments as in EXHIBIT A. He felt the minimum sentencing is an excellent tool. A deferred imposition would still be possible.

REP. JENSEN asked if officers would be protected under the law if they took drugs while acting within the scope of duty, for example undercover agents. REP. KEYSER stated undercover agents are protected by law already. RACICOT stated they are currently protected under case law only. There is no provision in statutory law concerning this situation.

REP. DAILY stated if the bill states a person convicted under this bill cannot have his sentence entirely suspended or deferred, then the sentence is not really deferred because it would be on his record. RACICOT stated when someone is arrested he has an arrest record. If he is convicted, then he has a conviction record. If the sentence is deferred he would still have an arrest record. However, if he serves time under a deferred sentence, the record of all but the arrest would later be expunged.

REP. RAMIREZ made a substitute motion to withdraw his previous motion and to amend the bill as follows: insert the language "one day or six months minimum shall be imposed." REP. RAMIREZ stated the minimum fine would be as is in the bill.

REP. JENSEN asked what the effect of this bill would be on the Yellowstone County Jail. REP. RAMIREZ stated there would probably be some impact. However, the bill should not be killed just because there is not physical room in the jails. RAMIREZ did not feel the Justices of the Peace would decide a person is not guilty because there is not room in the jails.

REP. JENSEN was concerned with the Justices of the Peace's authority. Most of them do not have a legal background. REP. KEYSER stated JP courts are now allowed to fine up to the limits provided for in this bill.

REP. RAMIREZ felt the purpose of the bill is to have this type of hearing in JP court now. BRENDA DESMOND stated if this bill is passed it would give JP courts jurisdiction over an offense that is comparable to DUI offense. The JP courts should be able to handle this fairly well.

REP. SPAETH agreed stating the bill reduces dangerous drugs to the JP court level and also sets up a rehabilitation program. It would give offenders a "taste" of jail.

REP. RAMIREZ withdrew his motion of the amendment. He then moved to amend the bill on page 3 by reinserting lines 8 through 10. REP. EUDAILY seconded the motion. All were in favor of the motion except REP. KEYSER, REP. DAILY and REP. HANNAH, all voting no.

REP. RAMIREZ moved his previous amendments, seconded by REP. JENSEN.

REP. BERGENE stated the bill would establish a good rehabilitation program.

All were in favor of the amendments except REP. D. BROWN.

REP. KEYSER moved to amend page 3, line 10, inserting "one" and striking "a". The motion was seconded by REP. CURTISS. REP. DAILY supported the amendment. REP. IVERSON felt the amendment was not needed, as the intent is the same.

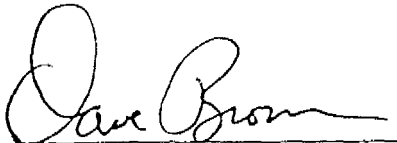
REP. KEYSER withdrew his motion.

REP. RAMIREZ moved the bill be amended to protect officers transporting drugs while in the scope of their employment. All were in favor of the motion. It was moved by REP. RAMIREZ that the title be amended to reflect the various passed amendments. The motion carried unanimously.

Judiciary Committee
January 14, 1983
Page 11

REP. ADDY moved DO PASS AS AMENDED, seconded by REP. CURTISS.
All were in favor of the motion except REP. D. BROWN and REP.
JENSEN.

The meeting adjourned at 11:30 a.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

(1 of 2)

January 14,

1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 150

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT TO JUSTICES' COURTS JURISDICTION OVER FIRST OFFENSES OF CRIMINAL POSSESSION OF MARIJUANA AND TO ALTER THE PENALTY; AMENDING SECTIONS 3-10-303 AND 45-9-102, MCA; REPEALING SECTION 45-9-201, MCA."

Respectfully report as follows: That HOUSE Bill No. 150

BE AMENDED AS FOLLOWS:

1. Title, line 6.

Following: "PENALTY;"

Insert: "AND TO EXEMPT FROM THE PROVISIONS CRIMINALIZING POSSESSION OF DANGEROUS DRUGS LAW ENFORCEMENT PERSONNEL ACTING WITHIN THE SCOPE OF THEIR DUTY;"

2. Page 2, lines 15 through 17.

Following: "and" on line 15

Strike: line 15 through "imprisonment" on line 17

Insert: "shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not less than 1 day or more than 6 months. The minimum fine and jail sentence must be imposed as conditions of a suspended or deferred sentence"

XXXXXX
XXXXXX

DAVE BROWN,

Chairman.

January 14, 1983

3. Page 3, following line 10.

Insert: "(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Law enforcement personnel acting within the scope of their duties are exempt from this section."

Renumber: subsequent sections

AND AS AMENDED
DO PASS

1/14/83

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DRUG LAWS; PROVIDING FOR JUSTICE COURT JURISDICTION OVER CERTAIN OFFENSES; AMENDING SECTION 45-9-102, MCA; AND REPEALING SECTION 45-9-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-9-102, MCA, is amended to read:

45-9-102. Criminal possession of dangerous drugs.

(1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed \$4,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the

county jail for not less than 5 days or more than 6 months. The minimum fine and jail sentence may be imposed as conditions of a suspended or deferred sentence but may not be suspended or deferred entirely. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(8), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both, punished by a fine of not less than \$300 or more than \$50,000 except as provided in 46-18-222 and by imprisonment for not less than 30 days in the county jail or more than five years in the state prison. The minimum fine and jail sentence may be imposed as conditions of a suspended or deferred sentence but may not be suspended or deferred entirely.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

Section 2. Section 45-9-201, MCA is hereby repealed.

Exhibit B
HB 150
1/14/83

HOUSE BILL NO. 150

INTRODUCED BY

*Rock Swift, Abdulhammed, Robert Gachini,
Brenda Christiane, Linda*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GRANT TO JUSTICES' COURTS JURISDICTION OVER FIRST OFFENSES OF CRIMINAL POSSESSION OF MARIJUANA AND TO ALTER THE PENALTY; AMENDING SECTIONS 3-10-303 AND 45-9-102, MCA; REPEALING SECTION 45-9-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6 months or both such fine and imprisonment, ~~excluding jurisdiction in cases commenced under Title 45, chapter 9, except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4);~~

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than \$1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of

shall be punished by a fine ~~or~~ not less than \$100 or more than \$500 and imprisonment in the county jail for not less than 5 days or more ~~than 6~~ months. The minimum fine and jail sentence may be imposed as conditions of a suspended or deferred sentence but ~~may~~ ^{NOT} be suspended or deferred entirely. ^{all misdemeanors punishable by a fine only not exceeding}

\$1,500; and

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings."

Section 2. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1)

A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and ~~punishable by a fine not to exceed \$1,000 or \$500 or imprisonment in the county jail for a term not to exceed 1 year or 6 months or both such fine and imprisonment. A~~ person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more

than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be ~~imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both~~

~~(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.~~

~~(6) (5) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.~~

~~NEW SECTION. Section 3. Repealer. Section 45-9-201, MCA, is repealed.~~

-End-

New Section Law enforcement personnel while acting within the scope of their employment are exempt ₋₃₋ from this section.

→ punished by a fine of not less than \$300 or more than \$50,000 except as provided in 46-18-222 and by imprisonment for not less than 30 days in the county jail or more than 5 years in the state prison. The minimum fine AND jail sentence may be imposed as conditions of a suspended or deferred sentence but may not be suspended or deferred entirely.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7, 1983

The twenty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 7, 1983 at 10:10 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Daniels who was excused.

CONSIDERATION OF HOUSE BILL 150: Representative Peck, sponsor of this bill, advised it was being introduced at the request of an organization referred to as H.E.L.P. Under this bill, jurisdiction would be given to the Justice Courts to handle first offense criminal possession of marijuana cases. HB150 would also change the penalties imposed for this offense.

PROPOSERS: Marc Racicot, representing the County Attorney's Association, supported the bill and stated it would relieve the district courts of the time spent on these violations and give the misdemeanor possession cases the attention they deserve.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Galt expressed concern about the wording of the penalty. He asked Representative Peck if it is his intention that the first time offender should not be imposed a sentence. Representative Peck felt a sentence should be imposed with a deferred condition and Marc Racicot concurred with this assessment of the wording in the bill.

Chairman Turnage was also concerned with the wording of the penalty provision and felt there was an internal conflict between page 2, line 23 and page 3, line 19. He was also concerned with the wording on page 3, subsection (5), as he felt this may be interpreted to mean that a law enforcement officer has permission to smoke marijuana. He suggested changing this language to be more clear.

There being no further discussion by the committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 235: Representative Nilson, sponsor of this bill, advised it was being introduced at the request of the Department of Institutions to repeal those sections of the

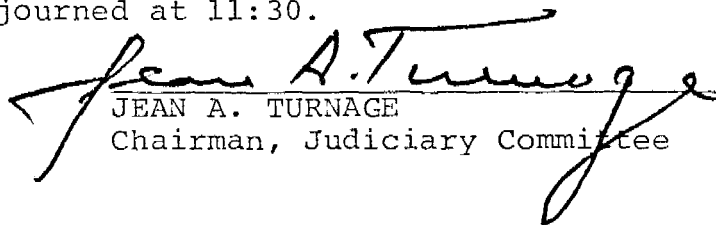
Senate Judiciary Committee
March 2, 1983
Page 4

Berg moved to adopt the amendments. This motion passed unanimously. Senator Mazurek moved HB119 BE CONCURRED IN AS AMENDED. This motion also carried unanimously.

ACTION ON HOUSE BILL 148: The Committee felt the judge currently has control over attorney fees if there is a complaint that an attorney is overcharging or mis-using insurance proceeds for figuring their fee. The bill was designed to handle an abuse which the court now has the power to address. Senator Galt moved to TABLE HB148. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 150: Amendments were distributed and reviewed. The Committee had previously adopted amendments which would eliminate the mandatory one day jail sentence. The newly distributed amendment would eliminate that section of the bill which exempts law enforcement personnel from all of the provisions of HB150 when they are acting within the scope of their duties. The Committee felt this was necessary so there would be no confusion that law enforcement personnel could smoke marijuana. Senator Berg moved to adopt this amendment. This motion carried unanimously. The major intent of the bill was to make possession of marijuana a matter of justice court jurisdiction. Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:30.


JEAN A. TURNAGE
Chairman, Judiciary Committee

MR. PRESIDENTWe, your committee on Judiciaryhaving had under consideration House Bill No. 150

Peck (Malligan)

Respectfully report as follows: That House Bill No. 150

third reading bill, be amended as follows:

1. Title, lines 7 through 10.
Strike: "AND TO" through "DUTY;"
2. Page 2, line 23.
Strike: "LESS THAN 1 DAY OR"
Strike: "AND"
3. Page 2, line 24.
Strike: "JAIL SENTENCE"
Following: "AS"
Insert: "A"
Strike: "CONDITIONS"
Insert: "CONDITION"

Continued on Page 2

And, as so amended,

~~DO PASS~~ BE CONCURRED IN

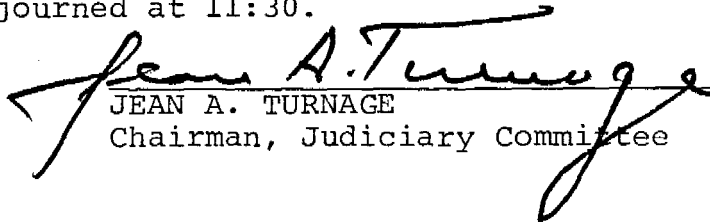
J/C

Berg moved to adopt the amendments. This motion passed unanimously. Senator Mazurek moved HB119 BE CONCURRED IN AS AMENDED. This motion also carried unanimously.

ACTION ON HOUSE BILL 148: The Committee felt the judge currently has control over attorney fees if there is a complaint that an attorney is overcharging or mis-using insurance proceeds for figuring their fee. The bill was designed to handle an abuse which the court now has the power to address. Senator Galt moved to TABLE HB148. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 150: Amendments were distributed and reviewed. The Committee had previously adopted amendments which would eliminate the mandatory one day jail sentence. The newly distributed amendment would eliminate that section of the bill which exempts law enforcement personnel from all of the provisions of HB150 when they are acting within the scope of their duties. The Committee felt this was necessary so there would be no confusion that law enforcement personnel could smoke marijuana. Senator Berg moved to adopt this amendment. This motion carried unanimously. The major intent of the bill was to make possession of marijuana a matter of justice court jurisdiction. Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:30.


JEAN A. TURNAGE
Chairman, Judiciary Committee

Senate Judiciary Committee

Page 2

Re: HB150

March 2,

19 83

4. Page 3, line 21.
Following: "SENTENCE"
Insert: "OF IMPRISONMENT"
5. Page 3, line 22.
Strike: subsection (6) in its entirety.
Renummer: subsequent subsections.

And, as amended,

BE CONCURRED IN